



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 13, 2000

H.R. 1283

Asbestos Compensation Act of 2000

As ordered reported by the House Committee on the Judiciary on March 16, 2000

SUMMARY

H.R. 1283 would establish a process to attempt to resolve claims made by individuals whose health has been impaired by exposure to asbestos. CBO estimates that implementing H.R. 1283 would cost about \$1.4 billion over the 2001-2005 period, assuming the appropriation of the necessary amounts. In addition, the legislation would authorize the recovery of federal funds used to pay individual asbestos claimants, and the spending of any funds recovered. Those cash flows would affect direct spending; therefore, pay-as-you-go procedures would apply. CBO expects that the collection and spending of recovered funds would nearly offset each other over the next several years, but we estimate collections would exceed spending by \$40 million over the 2002-2005 period.

H.R. 1283 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. H.R. 1283 would create new private-sector mandates for individuals filing new claims for compensation for injuries caused by exposure to asbestos, for all attorneys representing those individuals, and for businesses named as defendants by such individuals. Because reliable data on current asbestos litigation is scarce, CBO cannot produce a precise estimate of the total cost of those mandates. CBO expects, however, that the total cost to the private sector of complying with the mandates in the bill would fall below the threshold established in UMRA (\$109 million in 2000, adjusted annually for inflation).

MAJOR PROVISIONS

H.R. 1283 would establish the Office of Asbestos Compensation (OAC) within the Department of Justice. The bill would authorize appropriations for the new office of up to \$250 million in the first year after enactment and up to \$150 million in each year thereafter. The OAC would review the medical eligibility of claimants under the bill, adjudicate cases,

reimburse claimants for medical examination and testing expenses, pay individuals to settle certain claims, and seek to recover compensation payments made to individuals from liable firms in the asbestos industry.

Under H.R. 1283, the OAC would have to issue a certificate of medical eligibility to claimants before cases could be tried in federal or state court. The bill would require the OAC and all defendants named in asbestos litigation cases to offer settlements to each medically eligible claimant in a timely manner. If the OAC's settlement offer is accepted by the claimant, the OAC would pay the claim and seek reimbursement from the named defendants.

H.R. 1283 would authorize the OAC to recover its administrative expenses, medical reimbursements, and settlement payments from the defendants. The OAC also would have the authority to spend these collections without further appropriation action.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1283 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice). CBO expects that, after 2005, the number of cases settled each year would decline. As a result, net discretionary costs would decrease to about \$100 million annually by fiscal year 2010. Both the claims reimbursement and settlement payments from those collections also would decline gradually after 2005.

BASIS OF ESTIMATE

CBO estimates that implementing H.R. 1283 would have gross discretionary costs of \$1.6 billion over the 2001-2005 period. Some of these costs would be offset by assessments on asbestos defendant firms to cover certain administrative and medical examination costs under the bill. Over the 2001-2005 period we estimate the OAC would collect about \$260 million from such assessments. Therefore, CBO estimates that implementing H.R. 1283 would result in net discretionary spending of \$1.4 billion over the 2001-2005 period.

In addition, we estimate that enactment of the bill would result in the collection from defendant firms of some of the federal funds paid to compensate asbestos claimants. The collections would be recorded as offsetting receipts (a credit against direct spending). Over the 2002-2005 period, we estimate \$1 billion would be collected, and all but about \$40 million would be paid to settle additional asbestos claims during those years.

	By Fiscal Year, in Millions of Dollars				
	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION					
Administrative and Medical Examination Costs					
Estimated Budget Authority	20	70	85	90	95
Estimated Outlays	15	65	85	90	95
Settlement Payments to Claimants					
Estimated Budget Authority	100	150	340	350	360
Estimated Outlays	0	230	330	350	360
Offsetting Collections from Administrative and Medical Reimbursements					
Estimated Budget Authority	0	-35	-70	-75	-80
Estimated Outlays	0	-35	-70	-75	-80
Total Discretionary Spending					
Estimated Budget Authority	120	185	355	365	375
Estimated Outlays	15	260	345	365	375
DIRECT SPENDING					
Offsetting Receipts from Claims Reimbursements					
Estimated Budget Authority	0	-70	-180	-330	-420
Estimated Outlays	0	-70	-180	-330	-420
Settlement Payments to Claimants					
Estimated Budget Authority	0	70	180	330	420
Estimated Outlays	0	65	170	315	410
Total Direct Spending					
Estimated Budget Authority	0	0	0	0	0
Estimated Outlays	0	-5	-10	-15	-10

This estimate assumes that the funds that would be appropriated to implement the bill would exceed the amounts specifically authorized by the legislation. CBO estimates that additional funds would be required to expedite the settlement of outstanding claims—as required by the legislation.

While H.R. 1283 would authorize the appropriation of \$850 million over the 2001-2005 period for the costs of the OAC, CBO estimates this amount would not be sufficient for the OAC to certify applicants and make compensation offers. We estimate that additional

appropriations of \$810 million would be needed over the five-year period. The bill would require that the OAC quickly certify the medical eligibility of all claimants, including those involved in the 200,000 cases currently pending. Claimants could not seek damages in court until certified. CBO expects that the OAC would attempt to certify as many applicants as possible. Further, the OAC would not have the discretion to delay its offer of compensation to claimants. The bill would require that the OAC offer compensation to each certified claimant within 10 days of the defendants' offers.

CBO estimates that the OAC would not be successful in recovering all claims paid to eligible claimants from defendants. If the OAC does successfully achieve a reimbursement rate higher than our estimate, the net cost of this legislation to the government would be lower. H.R. 1283 also would authorize the OAC to recover from the defendants administrative expenses, medical reimbursements, and settlement payments. Based on the experience of similar programs and our assessment of the capacity of the asbestos industry to pay claims, CBO expects that the OAC will collect over 80 percent of its administrative costs and about 65 percent of settlement payments to claimants. We expect that most defendants' payments would occur over a three-year period.

Asbestos Claims Background

H.R. 1283 would establish the OAC to attempt to resolve a large backlog of cases involving individuals seeking compensation from private companies connected to the manufacture of asbestos. Approximately 200,000 such cases remain outstanding and about 30,000 new cases are filed each year. The majority of cases that are resolved each year result in settlement payments before the cases are tried in federal or state court.

Asbestos Claims Process Under the Bill

The OAC would serve two major functions under the bill. First, it would issue certificates of medical eligibility that all claimants must receive prior to pursuing damages in court. The bill specifies the medical criteria that would qualify individuals to seek such compensation. Second, the OAC would make settlement offers to each qualifying applicant. These offers would vary depending on the age of the applicant, the degree of impairment, and other factors. The OAC would establish a schedule of compensation payments offered by the OAC and such offers would be made public. Qualifying individuals could accept a compensation offer from the OAC or from the private companies named in their claim. The bill would authorize the appropriation of funds for the administrative costs of the OAC and for settlement payments to claimants.

OAC Administrative Costs

Because the intent of H.R. 1283 is to provide a timely resolution to asbestos claims, CBO expects that the OAC would be fully staffed and able to review claims by the beginning of fiscal year 2002, with a headquarters in Washington, D.C., and six regional offices. Based on the experience of other program startups and the magnitude of the task facing the OAC, we anticipate that the staff of the OAC would total about 400 persons by 2002 and would grow by 10 percent annually through fiscal year 2005. The number of OAC staff would gradually decrease thereafter as the total number of outstanding claims decreases. Assuming that the OAC is reasonably efficient at handling claims, we estimate that the office could process 60,000 claims in 2002 and would clear the existing backlog of roughly 200,000 claims by the end of 2005. CBO estimates that administrative expenses of the OAC would total \$200 million over the five-year period.

Medical Expenses Reimbursement

H.R. 1283 would provide for the reimbursement of certain medical expenses of claimants, up to \$1,500 per claim. Such expenses could include chest X-rays and lung capacity testing. Under current law, settlement offers by the defendants often include reimbursements for medical expenses. Absent this offer, the claimants are responsible for such costs.

Based on information from asbestos industry experts, CBO expects that most claimants who do not meet the bill's requirements for medical eligibility would apply for and receive reimbursement at an average cost of \$1,200 per claim. CBO estimates that this provision would apply to over 30,000 individuals for each of fiscal years 2001 through 2005 and would cost about \$150 million over the 2001-2005 period.

Settlement Payments To Claimants

H.R. 1283 would authorize the director of the OAC to establish a schedule of compensation payments that would be offered to individuals with varying degrees of asbestos impairment to determine the value of the OAC's settlement offers to claimants and to make settlement offers to all medically eligible claimants based on this schedule. CBO estimates that the OAC would be able to process about 60,000 claims in 2002, with the annual amount increasing to about 80,000 by 2005. Based on information from consultants to the defendant companies, CBO expects that just under half of these claims would meet the bill's medical eligibility requirements.

In addition, we assume that the settlement amounts offered by the OAC would be similar to the payments that individuals can expect under current law. CBO estimates that total settlement payments to claimants by the OAC would be about \$2.2 billion over the 2002-2005 period, including \$1.3 billion from appropriated funds and direct spending of \$960 million from amounts recovered from defendant companies.

Under current law, settlement offers vary widely and are determined, in part, by jurisdiction, age of claimant, number of years of exposure, and type of illness. For example, claimants with mesothelioma (a severe and terminal disease caused by exposure to asbestos) are likely to receive a private compensation settlement of over \$1 million, while a case involving a claimant whose X-rays shows exposure to asbestos but whose medical tests do not show advanced signs of disease may receive \$5,000 and the right to seek future compensation if a disease develops. Furthermore, claimants who present the same facts in different jurisdictions throughout the United States could receive widely disparate awards. Based on past settlement payments made by the defendants, CBO estimates that the average settlement payment made by the OAC to claimants would be about \$50,000.

CBO expects that some individuals, especially those with the severest levels of impairment (mesothelioma claimants, for example) would opt out of the OAC's compensation processes and seek higher compensation payments in court. Because the compensation schedule would be publicly available, CBO expects that the defendants would offer claimants from jurisdictions with historically high compensation levels greater settlement amounts than what they would receive from the OAC to avoid the high cost of a jury award in such jurisdictions. CBO estimates that only about 40 percent of the eligible claimants (or about 10,000 to 15,000 claimants each year over the five-year period) would accept the OAC's settlement offer.

Section 402 would authorize the appropriation of \$100 million for a loan to the OAC to settle claims. For this estimate, CBO considers the \$100 million as an authorization for the appropriation of funds in fiscal year 2001. Even though the bill characterizes that authority as a loan subject to the Federal Credit Reform Act, a payment cannot be considered a loan under Credit Reform if the duty to repay the government arises from an exercise of sovereign power, tort liability, or some other non-contractual obligation.

U.S. Court of Federal Claims

The bill would transfer the jurisdiction of cases in which the claimant accepts the OAC's offer from the U.S. District Court to the U.S. Court of Federal Claims. CBO estimates that H.R. 1283 would cost the U.S. Court of Federal Claims \$1 million annually over the five-year period for additional attorneys and support staff. Because of the large backlog of

cases in U.S. District Court, CBO estimates that enacting H.R. 1283 would not result in savings for that court over the 2001-2005 period.

Cost Recovery

CBO estimates that the OAC would collect \$240 million over the 2001-2005 period from asbestos defendants for administrative and medical reimbursement costs. (Such collections would offset appropriated spending.) In addition, CBO estimates the OAC would collect \$1 billion from asbestos defendants to settle cases over the five-year period. Because the OAC would be authorized to spend these receipts without further appropriation action, these collections would be recorded as offsetting receipts (a form of direct spending) and their expenditure would be recorded as direct spending.

Administrative and Medical Reimbursements. The legislation would authorize the collection of funds to reimburse the OAC for administrative and medical examination expenses, and for the cost of paying claims to individuals. Based on the experience of similar programs, CBO estimates that the OAC will collect nearly \$260 million over the 2001-2005 period—about 85 percent of medical and administrative expenses.

Claims Reimbursements. H.R. 1283 would authorize the OAC to pursue claims against the defendant companies after paying settlement offers to claimants. CBO estimates the OAC would receive \$1 billion over the 2001-2005 period from defendant companies—or about two-thirds of the total amount paid to individuals. The amount of such receipts is highly uncertain. Because of the large number of cases involved and the history of asbestos litigation, CBO expects that the OAC and defendant companies will settle most of the OAC claims out of court. Based on information from defendants and groups representing asbestos claimants, CBO expects that the above total is at or near the maximum amount the industry can pay to settle such claims without risking insolvency of the firms involved.

Under current law, asbestos defendants report a liability for asbestos compensation claims that exceeds \$8 billion. Information on the total amount of cash compensation payments made by defendants to individuals is incomplete but probably exceeds \$3 billion, based on limited information from public reports. Those payments represent a substantial financial burden for defendants, and present a significant risk that some firms will become insolvent. This year alone, two of the major asbestos defendants entered bankruptcy. This burden is increasing as juries award larger damages and claimants demand larger settlements.

Thus, to avoid insolvency, we expect most companies would negotiate either to repay the federal government amounts less than those paid by the OAC to settle claims, or to make scheduled payments over a number of years. The amount of OAC settlement payments to

claimants that is reimbursed would depend in part on how much the OAC offers on an annual basis. We expect that defendant companies would be unable to pay total settlement amounts to claimants significantly in excess of their current spending level. Information on annual amounts paid by asbestos defendants to settle asbestos claims is not uniformly or consistently reported, however, based on information from some defendant firms we expect defendants would seek to negotiate reimbursements of up to 90 percent of the OAC's annual compensation costs over the five-year period. As the total amount of compensation paid by the OAC declines we expect the recovery rate from defendant firms would increase.

In addition to negotiated reimbursement amounts, settlement agreements with the OAC would expose the government to the risk that defendants would become insolvent before paying the agreed amounts. To estimate this risk, CBO consulted with industry experts and examined the credit ratings of defendants. The information on credit ratings is useful because different credit ratings reflect analysts' expectations of insolvency. Most defendants have credit ratings around "BBB"; however, one credit-ratings company announced that it is considering lowering the rating of a defendant as a result of the recent increase in asbestos liabilities. CBO assumes that the payments by defendants under settlement agreements with OAC would have a credit risk comparable to debt rated as "B." Debt with this rating typically has a default rate of around 30 percent.

Considering both the capacity of asbestos defendants to reimburse the OAC and the risk to the government that such firms may default in their agreements to reimburse the OAC, CBO estimates the OAC would collect about 65 percent of the cost of settlement agreements from defendants. The precise amount of recoveries is very uncertain, but is unlikely to approach 100 percent. If the total claims paid by the OAC are significantly more than CBO estimates, we expect this recovery rate would be lower. Alternatively, if the OAC can achieve a higher recovery rate, the net cost of the bill would be lower than we have estimated.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, budget year, and the succeeding four years are counted.

	By Fiscal Year, in Millions of Dollars										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays	0	0	-5	-10	-15	-10	0	10	15	5	0
Changes in receipts											Not applicable

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 1283 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 1283 would create new private-sector mandates for individuals filing new claims for compensation for injuries caused by exposure to asbestos, for all attorneys representing those individuals, and for businesses named as defendants by such individuals. CBO estimates, that the total cost to the private sector of complying with the mandates in the bill would fall below the threshold established in UMRA (\$109 million in 2000, adjusted annually for inflation).

H.R. 1283 would create a new private-sector mandate for individuals filing new claims for compensation for injuries caused by exposure to asbestos. The bill would require such individuals to obtain certificates of medical eligibility from the Office of Asbestos Compensation before filing suit in state or federal court. For individuals who meet the bill's medical requirements, the cost of the mandate would be small. Section 102 would require the OAC to make determinations of eligibility within 30 days of receiving a claim. After receiving certificates of eligibility, those individuals could proceed to file suit as under current law.

The costs of the mandate for individuals whom the OAC deems ineligible would be the value of the settlements and judgments that they would be able to obtain under current law but not under H.R. 1283. The bill would prevent individuals whom the OAC judges do not meet the medical eligibility requirements from obtaining compensation for their exposure to asbestos through the courts. (The bill would, however, toll the statute of limitations for such injuries, so that if such individuals did develop eligible conditions they could seek compensation at a later date.)

Because comprehensive data relating to asbestos exposure, litigation, and compensation are difficult to obtain, CBO cannot precisely estimate the costs of the bill's mandate for claimants. Based on the information available to CBO from academic, industry, and other sources, CBO expects that the cost of the mandate on ineligible claimants could fall between \$10 million and \$40 million annually by 2005. (Costs would be lower in the early years because many claimants receive settlement payments over the course of several years.) The uncertainty in those estimates stems from the difficulty in predicting the number of claimants who would receive compensation under current law but would be ineligible under H.R. 1283.

The bill would create a new private-sector mandate for claimants' attorneys by directing the OAC to regulate attorneys' fees and compensation. Most attorneys representing claimants in asbestos cases charge contingent fees; that is, they take a percentage of any settlement or damages awarded to the claimant as payment for their services. Although the bill does not contain specific rules or guidelines for the OAC to follow, CBO expects that the OAC would limit attorneys' fees to some maximum allowable percentage of a claimant's recovery, perhaps comparable to the fees that federal courts allow claimants' attorneys in product liability class-action suits to charge. Because the bill contains few guidelines for OAC regulation and because asbestos cases are tried in multiple state and federal courts, CBO cannot estimate the costs of this mandate to claimants' attorneys.

H.R. 1283 would create a new private-sector mandate for defendants by requiring them to pay assessments to the OAC. Section 401 would direct the OAC to collect assessments from asbestos defendants to defray administrative and certain other costs. The bill would not provide specific rules for calculating or collecting assessments, however, CBO expects that assessments levied on individual defendants would be proportional to the OAC's expenditures relating to that defendant. CBO estimates that asbestos defendants would be required to pay assessments totaling \$35 million in 2002, \$70 million in 2003, \$75 million in 2004, and \$60 million in 2005.

Overall, however, the bill would result in substantial benefits to asbestos defendants. H.R. 1283 would encourage claimants to choose administrative adjudication through the OAC rather than go to court. Out-of-court settlements are typically lower than court-awarded judgments. Participation in the bill's administrative adjudication process would eliminate the risk of punitive damages for some defendants. More significantly, the bill would benefit defendants by reducing the number of new claims against them.

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